

Att'y Dkt. No.
US-138O

U.S. App. No: 10/019,284

REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

Claim of Priority under 35 U.S.C. §119

Applicants thank the Examiner for her acknowledgement of the priority claim.

Objections to the Claims

Claims 1-3 were objected for allegedly have various informalities. Applicants submit that the claim amendments submitted herewith have addressed the Examiner's concerns. Withdrawal of the objections are respectfully requested.

Claim Rejections Under 35 U.S.C. §112, 1st paragraph

Claims 1-3 were rejected under 35 U.S.C. §112, first paragraph for allegedly containing subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Applicants respectfully disagree with the Examiner's assertion; however, have amended the claims to add defining characteristics outlined in the specification. The Examiner has objected to the language "...substitution deletion, insertion, addition, or inversion of one or several amino acids..." Applicants have amended the claims to insert the phrase "or a variant of the amino acid sequence of SEQ ID NO: 2 which has homology of 80% or more to the amino acid sequence of SEQ ID NO: 2". This language is supported by the specification

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at page 10, lines 7-10, and provides structural definition to the claims. The Examiner had alleged that the specification does not contain any disclosure of structures of all proteins that bind sucrose..." The claims, as amended, clearly provide sufficient structural definition of the protein such that the specification adequately describes that which applicants are claiming. Applicants assert that there is now sufficient structural definition in the claims, and combined with the functional limitation regarding sucrose binding activity, applicant's assert that one skilled in the art is able to reasonable conclude that applicants were in possession of the claimed invention at the time the instant application was filed.

Claims 1-3 were rejected under 35 U.S.C. §112, 1st paragraph for allegedly failing to provide a enabling specification commensurate in scope with the claims. As stated above, applicants have amended the claims to delete the objectionable language and have added more structural language regarding the claimed protein and DNA. It is asserted that the claims are now commensurate with the enablement provided by the disclosure in that the number of protein and DNA species encompassed by the claims are of a number that is reasonable when evaluated under the Wands factors, particularly in view of the predictability in the art, and the abundant guidance in the specification (see page 9, line 21 – page 11, line 10, and the examples). Applicants assert the experimentation necessary to practice the invention is not undue in light of the breadth of the claims as amended and in view of the disclosure.

In light of the amendments to the claims and the above arguments, applicants assert that these rejections are moot, and respectfully request they be withdrawn.

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Claim Rejections Under 35 U.S.C. §112, 2nd paragraph

Claims 1 and 2 were rejected under 35 U.S.C. §112, 2nd paragraph for allegedly being indefinite. The claim amendments made by Applicants have effectively removed the objectionable language and therefore, respectfully request that the rejection be withdrawn.

Claim Rejections Under 35 U.S.C. §101

Claims 1-3 were rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter. Applicants have amended the claims as suggested by the Examiner and therefore, respectfully request that the rejection be withdrawn.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 1-3 have been rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Wagner et al.. The Examiner alleges that Wagner teaches the scrA gene which binds sucrose. The claims, as amended, require that the claimed protein or DNA have the sequence specified in SEQ ID No. 1 or 2, respectively, or be 80% homologous to such protein/DNA. Applicants assert that the scrA gene, or the encoded enzyme do meet these limitations. Therefore, applicants respectfully request that the rejection be withdrawn.

Conclusion

For at least the foregoing reasons, Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of the present patent application is therefore respectfully solicited.

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If Examiner Slobodyansky believes that a telephone conference with the undersigned would expedite passage of the present patent application to issue, she is invited to call on the number below.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and the undersigned hereby authorizes any such charges to be charged to the credit card recited in the attached PTO-2038.

Respectfully submitted,

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